

COPELAND LOCAL DEVELOPMENT FRAMEWORK

**EXAMINATION OF CORE STRATEGY AND DEVELOPMENT
MANAGEMENT POLICIES**

**BOROUGH COUNCIL
STATEMENTS:
MATTER 11**

DEVELOPMENT MANAGEMENT POLICIES

March 2013



11.1. Is policy DM2 on renewable energy unduly restrictive and inconsistent with the NPPF?

- 11.1.1 The National Planning Policy Framework (paragraph 98) states that a renewable energy planning application should be approved “if its impacts are (or can be made) acceptable”.
- 11.1.2 Policy DM2 lays out the criteria according to which the Borough Council will judge the acceptability of a proposal. The criteria are reasonable and relate to other concerns supported by the NPPF, such as the landscape, architectural heritage, nature conservation and pollution.
- 11.1.3 A particular concern is that developments should not adversely affect the scenery on the fringes and setting of the Lake District. It is not reasonable to assume that as soon as one crosses the boundary of the National Park, where to protect its special character commercial wind generation is effectively forbidden, applications will be allowed as if it were not there. It is, on the contrary, reasonable to take special care that, in areas close to the National Park and whose scenery is a continuation of it, landscape impact is given full consideration.
- 11.1.4 One objection (REG Windpower, S047) has focused on the word ‘acceptable’. This objection is based on a misreading of the NPPF use of the word, which is clearly in the context of local planning authorities being expected to define, or give guidance as to, what ‘acceptable’ means. The word on its own is too vague. The policy allows for mitigation measures to be secured to minimise potential impacts. This allows developers to demonstrate that they have done as much as can be expected to reduce impacts. ‘Minimise’ is more verifiable, and therefore more positive, than ‘make acceptable’ especially in communities which would regard any wind turbine as unacceptable in principle.
- 11.1.5 We are therefore not persuaded that the policy contradicts the NPPF.
- 11.1.6 The extent to which the Borough Council takes a restrictive line can be judged against development management performance using its 2006 Local Plan predecessor, which is slightly more restrictive than its replacement DM2..
- 11.1.7 Argument within the Borough over renewable energy development has focused on wind turbines. Twelve applications for commercial wind farms have been determined, of which 3 have been approved and 6 refused (plus one withdrawn and later resubmitted). Thus far four appeals have been determined, of which only two were allowed. See schedule of wind farm applications, Doc. 14.5.
- 11.1.8 Forty six applications have been received for domestic scale wind turbines, of which the majority of determinations have been favourable (22 approvals, 16 refusals). See schedule of applications, Doc. 14.6.

- 11.1.9 In 2012 six out of eight applications were rejected, including both the commercial applications determined (one against officer recommendation). All of the rejected applications were the subject of objection from at least one of the local Parish Council(s) (9 parishes making objections in all, to 4 of the applications), Friends of the Lake District (4), the Lake District National Park Authority (2) or Natural England (1).
- 11.1.10 When set against research demonstrating that nationally the proportion of wind applications approved is between a half and a third, and the landscape context in which we operate, this evidence does not suggest an unduly negative attitude but one which is based on the merits of each case. These figures are suggestive of a planning authority that treats such applications with care, rather than being unduly restrictive, and the policy reflects that.

11.2. Does policy DM3 to safeguard employment sites conflict with the position advocated in the NPPF (paragraph 22)?

11.2.1 Policy DM3 is a companion to the strategic policy ER4, which relates to the maintenance of a supply of employment land, including a provision (ER4C) for the identification of sites which are suitable for alternative use. These will be candidates for 'de-allocation', and allocation for other uses if appropriate, during the site allocation process.

11.2.2 NPPF paragraph 22 (first two sentences) says: -

“Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocation should be regularly reviewed.”

11.2.3 DM3A embodies this, and in fact is slightly more permissive – ‘would not make a significant contribution to the Borough’s land requirements’ is arguably more flexible than ‘no reasonable prospect of a site being used’.

11.2.4 DM3B notes that falling short of a 5 year supply of (housing) land would be a key justification – recognising the underlying purpose of NPPF which is to guard against authorities restricting housing development by allocating potential housing land for other uses, as is believed by some to be the practice on parts of southern England.

11.2.5 DM3C goes further, by allowing for exceptional proposals able to demonstrate benefits which would in effect override the policy.

11.2.6 Thus, having taken its cue from ER4 which conveys the requirement to maintain the employment land supply, DM3 elaborates on the theme of NPPF para. 22 by offering circumstances which might justify alternatives on land allocated for employment. It is certainly not in conflict with the NPPF and its intention is to take an open and flexible approach to alternative uses.

11.2.7 The Borough Council acknowledges that the policy might be seen in context of a superficial allocated ‘surplus’ of employment land. However, these allocations have been reviewed in the West Cumbria Employment Land and Premises Study (Doc 6.3) and the Employment Land Review Update (Doc 6.4). Each study has concluded that it is desirable to maintain a supply in excess of recent take-up rates, in order to have flexibility to respond to the demands which could be expected to arise from proposed Nationally Significant Infrastructure Projects. See discussion of this under Matter 5 Issue 5.3.

11.3. How would alternative uses be assessed (Policy DM3)?

11.3.1 The third sentence of NPPF para. 22 says: -

“Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals, and the relative need for different land uses to support sustainable local communities.”

11.3.2 Correspondingly, and maintaining the intention to be open and flexible, the policy is not hedged with qualifications and the approach of the Council would be to treat applications on their merits, in keeping with sound development management practice and in harmony with the national policy. Again, DM3 is more open than NPPF para. 22, given that, having accepted that there was a case for alternative use, the Borough Council would not normally fetter the developer by asking for ‘market signal’ or need justification for a proposal.

11.4. Is policy DM5 compatible with the national approach to Major Infrastructure proposals?

11.4.1 The Borough Council works closely with the Nuclear Decommissioning Authority and Sellafield Limited to ensure that planning issues relating to the facilities referred to here, both within the sites and resulting from their operation, are dealt with expeditiously and satisfactorily for all parties, taking into consideration also the safety, amenity and convenience of local residents.

11.4.2 Policy DM5 sets out what are in effect terms of reference for that relationship.

11.4.3 It relates to the normal operation of, and normal development within, those facilities – that is, development within the scope of the ‘normal’ statutory planning system. At present we have no indication that there will be development at the Sellafield site or the LLWR that would be classed as Nationally Significant Infrastructure, but if it were, then this policy would not apply except on an advisory basis, to be referred to in representations and negotiations as an expression of Council policy. The Council is well aware of the law on this matter.

11.4.4 DM5 should be read alongside DM1, the final sentence of which makes that crystal clear. The plan also makes appropriate reference to this legal context in ER1A, paragraph 4.4.1 (as renumbered, in Doc. 1.9) and the statement ‘The Approach to nationally Significant Infrastructure Projects’ at Section 1.5 (page 7 in Doc. 1.9).

11.5. Could elements of the supporting text to policy DM6 be more usefully incorporated into the policy on retail uses?

11.5.1 We considered the balance between policy and supporting text to be about right on this policy, because inclusion of supporting text would add detail which seemed to us to be excessive in a strategic policy, but are willing to submit to guidance on this issue.

11.6. Are policies for visitor accommodation (DM9) and residential caravan, mobile homes, chalets and beach bungalows (DM19) comprehensive?

11.6.1 These policies refer to circumstances specific to Copeland, DM9 being a tourism-related policy whilst DM19 is relevant to a locally specific form of permanent residential use of accommodation whose nature is more acceptable for tourism and whose location on the coast tends to make it unsuitable for permanent occupancy.

11.6.2 In broader terms we can examine the context underlying DM9. Copeland outside the National Park is not heavily provided with visitor accommodation, partly because many visitors to the western Lake District are staying elsewhere in the National Park, partly because those who do stay here are most likely to stay in recognised tourist 'hot spots' such as Eskdale, and partly because there is heavy demand for bed and breakfast accommodation, often on long term bookings, from Sellafield contract workers. There is not, therefore, great demand for this kind of development, though we are anxious to encourage it and the Council does work with Cumbria Tourism on promotion of the Western Lakes brand.

11.6.3 Policy DM9 is permissive and positive. It does not need to be hedged with guidelines as it might be in an area with greater pressure for this kind of development. It refers specifically to three types of development which experience demonstrates are likely to generate significant development demand, and therefore provides specifically for those. It is thus locally distinctive and in the Council's opinion its first sentence makes it as comprehensive as it needs to be.

11.6.4 Policy DM19 goes further than DM9 to give useful detail, again based on local experience of implementing planning policies and development management, on specific types of accommodation for which there is demand locally, particularly on the coast.

11.7. Is there sufficient detail in policy DM13 to understand how the Council will decide what constitutes 'adequate and appropriate' external amenity space?

- 11.7.1 This is a matter for negotiation. Discussion with applicants would centre on the circumstances of the development. For instance, in central Whitehaven, where housing is expected to maintain a continuous street frontage and the density of the 'urban grain' is quite high, the context is very different from what might be sought in a mid twentieth century area in need of upgrading, or a suburb, or a village.
- 11.7.2 Other factors would include the size of the building, the number of dwellings being created, and any information about the type of residents to be accommodated.
- 11.7.3 Another consideration is that this sub-policy allows development managers to consider the effect of small scale extensions ancillary to the development, if they are taking up limited external space to an extent which might affect the amenity of neighbours.
- 11.7.4 We consider that phrasing the policy in this way allows for more flexibility than would be obtained by drafting the policy to try to anticipate an indefinable range of circumstances.
- 11.7.5 The policy should also be read with reference to policies DM 10, 11 and 12, all of which contain stipulations about residential amenity.
- 11.7.5 Additionally, detailed guidance on this subject is under consideration as an element in the Supplementary Planning Document on design quality, currently being drafted with the intention of publishing a consultation draft later this year.

11.8. Is policy DM24 too imprecise to be effective i.e. how is ‘unacceptable risk of flooding’ to be interpreted?

General comments

- 11.8.1 Policy ENV1A states that development is only permissible “on sites located outside areas at risk of flooding, with the exception of some key sites in Whitehaven” (these sites being identified in ENV1B – that is, sites in the Town Centre, near the Market Place, and at Pow Beck). Policy DM24 will operate within that context.
- 11.8.2 The Environment Agency would have a view on sites in flood plains and the Agency would be the main determinant of whether the risk on any particular site is unacceptable. The development would be considered by the Agency, and by the Council as informed by the Agency, in the light of acceptable defence and/or mitigation measures, and the exception test, as stated in the NPPF and its Technical Guidance. ‘Unacceptable’ flood risk would be as defined in the NPPF, that is, development which fails the Sequential Test and the Exception Test. All this is entirely normal and understood by developers.
- 11.8.3 The Council would point out that the topography of the Borough, the proposed distribution of development and the supply of identified sites are such that, whilst there are points in the Borough where flooding is a problem, particularly in Egremont close to the River Ehen (fluvial, exacerbated in some places by surface water), and in the Market Place in Whitehaven (surface water, though tidal flooding would also be possible if defences were breached), flood risk is not a big issue in future spatial planning for Copeland.
- 11.8.4 This is because of the proposed distribution of development and the identified supply of development land, which can be summarised as follows.

Comments relating to site selection and site specific issues

- 11.8.5 Some of the sites allocated for development in the 2006 Local Plan and not yet developed, covered by Policy ST3B and identified in the Whitehaven Locality section (submitted plan page 86) are in Zone 3a. This is due to the risk of tidal flooding (protected against by the harbour wall and gate installed in 1998) and surface water flooding (which can be exacerbated if the harbour gate is closed against an unusually high tide). The Borough Council would not regard it as acceptable for an area in the core of Whitehaven town centre to be blighted because of flood risk, so those sites remain in the supply and it is anticipated that their allocation for development in the 2006 Local Plan will be confirmed in the Site Allocation DPD (subject to comment from consultees). Design Principle 16 of the ***Whitehaven Town Centre and Harbourside Supplementary Planning Document (Doc 3.3)*** states that development in the Town Centre must be safe, may have to demonstrate that it meets the exception test, and suggests a range of mitigatory design solutions. This has been discussed with the Environment Agency, which is also of course a statutory consultee, and has not objected to the SPD. In fact

simple responses, such as raised floor levels, have already been used in recent developments along the harbourside. The location of the remaining sites leads the Council to believe that development proposals would be likely to succeed in meeting the Exception Test, by virtue of the sustainability benefits of developing vacant sites in central locations to enhance the harbourside and dilapidated areas of land in the Pow Beck area, and thus bolster the vitality of Whitehaven.

11.8.6 ***The Strategic Flood Risk Assessment*** (Doc 10.1) has informed the site selection process as far as the SHLAA is concerned.

11.8.7 ***The Strategic Housing Land Availability Assessment*** (Doc 7.3) lists and maps the sites identified as available for development. Only one site, outside Whitehaven, put forward in the final report is subject to substantial flood risk (Kangol site, Cleator) and this is included because it is a recently (2009) vacated previously used site. Its position in Zone 3a will be a consideration in deciding whether to allocate it and/or consider any planning application which may emerge for its redevelopment.

11.8.8 In view of the very limited number of sites in the supply which are in areas at risk of flooding, we consider the level of attention given to the issue via the Strategic Flood Risk Assessment and the policies informed by it to be proportionate. The Environment Agency has been consulted throughout preparation of the plan (and further in preparation of the Whitehaven Town Centre SPD), and, after discussion of its concerns, has not objected to either document.

(Note; we recognise that surface water flooding is an issue in various locations on a site specific basis. We remain in discussion with United Utilities, and the indications so far are that this issue can be satisfactorily determined in the site allocation process, with regard to eastern Whitehaven and parts of Egremont in particular. This will be informed by the Surface Water Management Plan, now in preparation co-operatively, under the leadership of the County Council, though with no published draft as yet.)

11.9. Are the changes suggested by Millom Parish Council covering policies DM10/15/25/27/28 necessary to make the Plan sound?

11.9.1 Millom Without Parish Council has raised a range of issues reflecting the concerns of people in that parish. We have not identified any matter with which the Council would take issue; rather, the representations are seeking a level of detail which the Borough Council does not consider appropriate for a strategic, district-wide plan.

11.9.2 We have suggested to the Parish Council that these issues are best taken forward by means of a Neighbourhood Plan, and have had three meetings with representatives, including one with the full Parish Council, to discuss it. (Borough Council officers have pointed out that the Parish Council will have to take care in some instances that they do not propose policies which would go beyond what a Neighbourhood Plan can regulate, or would be in conflict with national planning policy.)

11.9.3 The Borough Council has designated Millom Without as a Neighbourhood Area and will support the Parish Council as it brings forward its plan. We do not consider their suggested changes to be necessary to make the plan sound – indeed, in some cases they might have the reverse effect. But a Neighbourhood Plan along the lines of the Parish Council’s thinking would be capable of enhancing the Local Development Framework by allowing a more detailed expression of the Local Plan to express local concerns in a manner consistent with the higher level planning strategy.

11.9.4 Our interpretation of the discussions held is that the Parish Council is content with this approach. The Borough Council therefore submits, and believes the Parish Council would agree to a large extent, that it is not necessary to consider further the incorporation into the Copeland plan of the detailed parish-specific content proposed in the representations.

11.10. Would the changes proposed to policy DM27 ensure the policy on the Built Heritage is compatible with the NPPF?

- 11.10.1 This sub-policy has not changed from the 'preferred option' wording which drew support from relevant bodies, and no objection, when originally published. However, the Borough Council has accepted, in response to the later objection of REG Windpower, that to rely on the unqualified word 'adversely' is too absolute.
- 11.10.2 Other than that, we stand by the justification given in response to the representation made on behalf of REG Windpower (Response S048, Doc. 1.3 page 135), and reaffirm that we consider that the phrase 'significantly adverse' is reasonable and in keeping with the NPPF.
- 11.10.3 The intent of NPPF paragraph 132, to which the objection refers, is clearly on the side of protection - "great weight should be given to the asset's conservation". It also says that "Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments ... should be wholly exceptional".
- 11.10.4 The objection proposes to make the policy more vague and potentially confusing by conflating it with the phrase "harm should be weighed against the public benefits of the proposal" taken from paragraph 134, without reference to the fact that that the balance of considerations in para. 134 applies only where the harm is "less than substantial". The wording proposed would, therefore, take the level of weight given to protection *below* that stipulated in para. 132.
- 11.10.5 There are only seventeen Scheduled Ancient Monuments in the Borough (which might be argued to demonstrate that they should be especially strongly protected, though that is by the way). We do not wish to overcomplicate this straightforward policy by including, selectively or otherwise, chunks of quotation from the NPPF. We consider that the insertion of the word 'significant' does the job perfectly well; any argument about what it means in particular circumstances can be settled by reference to the NPPF, as is right and proper.